

EXHIBIT

4

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 TRAVELERS CASUALTY AND SURETY COMPANY as
5 Administrator for RELIANCE INSURANCE
6 COMPANY,

7 Plaintiff,

8 -against-

9 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
10 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
11 ASSOCIATES, P.C.,

12 Defendants.

13 Case No. 08-CV-6915 (DLC)

14 (CAPTION CONTINUED)

15 July 24, 2008

16 10:21 a.m.

17 DEPOSITION of ATHENA CURIS,
18 taken by Defendant, pursuant to Notice,
19 held at the offices of HOLLAND & KNIGHT
20 LLP, 195 Broadway, New York, New York
21 before Wayne Hock, a Notary Public of the
22 State of New York.

1 A. Curis

2 asking, please let me know that and I
3 will be happy to rephrase it.

4 Q. Are you currently employed?

5 A. Yes.

6 Q. Who is your employer?

7 A. I'm self-employed, Fox
8 Industries.

9 Q. You say self-employed.
10 Are you the owner of that
11 company?

12 A. One of the principals, yes.

13 Q. Who are the other principals?

14 A. Steve Plagianos.

15 Q. Where is Fox Industries located?

16 A. One Commerce Street in Brooklyn.

17 Q. How long have you been employed
18 by Fox Industries?

19 A. From September of 2002.

20 Q. And in September of 2002, were
21 you a principal of Fox Industries?

22 A. Yes.

23 Q. Where were you employed prior to
24 Fox Industries?

25 A. Trataros Construction.

1 A. Curis

2 Q. How long were you employed at
3 Trataros Construction?

4 A. On or about fifteen years.

5 Q. When you started at Trataros
6 Construction, I'm assuming it would have
7 been about 1987; does that sound right?

8 A. On or about, yeah.

9 Q. When you started at Trataros,
10 what was your title or position?

11 A. I was an estimator.

12 Q. For how long were you an
13 estimator?

14 A. About a year.

15 Q. And after that year, did your
16 job title change?

17 A. Yes, it did.

18 Q. And what did it change to?

19 A. Project coordinator.

20 Q. And how long did you hold that
21 title?

22 A. Several years, four or five
23 years.

24 Q. And at the end of that four or
25 five-year period, did your title then

A. Curis

change again?

A. Yes, it did.

Q. What did it change to?

A. Project manager.

Q. How long did you hold that title?

A. Pretty much until the end of my time with Trataros.

Q. When did you leave Trataros?

A. Just prior to Fox Industries being incorporated.

Q. Why did you leave Trataros?

A. Trataros was no longer in business.

Q. Were you at any time a principal of Trataros Construction?

A. No.

Q. Do you know who the principals of Trataros Construction were?

A. Gus Trataros.

Q. Anyone else?

A. I'm not really sure.

Q. Did Steve Plagianos work for Trataros when you were there?

1 A. Curis

2 Q. What was your first job while
3 you -- after you got out of Pratt
4 Institute?

5 A. Breger Terjesen.

6 Q. When you left Trataros
7 Construction, was it still a going
8 concern?

9 MS. BONACCI: Objection.

10 THE WITNESS: I'm not sure what
11 happens here.

12 MS. BONACCI: I'll make an
13 objection because I have an issue with
14 the way the question is asked or the
15 form of it and then, if you still
16 understand the question, then you
17 would answer it if you still
18 understand it. If you don't
19 understand it, ask him to --

20 A. Please clarify.

21 Q. When you left Trataros, were
22 they still in business?

23 A. No.

24 Q. When did Trataros' business
25 cease?

1 A. Curis

2 A. I believe it was sometime in
3 2002, early 2003.

4 Q. At the time you left Trataros
5 did any employees remain after you had
6 left?

7 A. I believe perhaps my husband may
8 have still been there for a month or so.

9 Q. Do you know why Trataros'
10 principals closed the business?

11 MS. BONACCI: Objection.

12 A. I don't know the specific
13 reason.

14 Q. Do you know if it involved
15 financial issues?

16 A. I don't know that.

17 Q. Do you know what became of
18 Trataros' offices after the company went
19 out of business?

20 A. Could you please rephrase it?

21 Q. Sure.

22 What became of Trataros'
23 office --

24 MR. FROESSEL: Withdrawn.

25 Q. Where was Trataros' office

A. Curis

located?

A. 64th Street in Brooklyn.

Q. Is that where you were
headquartered pretty much until the day
you left?

A. I was pretty much in the field,
but that's where the main office was, yes.

Q. Do you know what date that main
office closed?

A. I don't know the exact date, no.

Q. Do you know -- did anyone stay
behind to clean out the office?

A. I don't know that.

Q. Did Trataros keep books or
records in the office at 64th Street?

A. Yes, they did.

Q. Do you know what became of those
records?

A. I believe the attorneys have
those records.

Q. What's the basis for your
belief?

A. I've seen files in Ms. Bonacci's
office. In addition, I had arranged for

A. Curis

subject matter of the deposition notice
with him?

A. No.

MR. FROESSEL: Mark this as
DASNY 20.

(Whereupon, a document entitled
Contract was marked DASNY Exhibit 20
for identification.)

MR. FROESSEL: For the record,
we've marked as DASNY Exhibit 20 a
contract dated as of August 27, 1998.

Q. Ms. Curis, have you ever seen
this document before?

A. Yes, I have.

Q. Can you tell me what it is.

A. It's contract sixteen on the
Baruch College project.

Q. And this was a contract between
Trataros and the Dormitory Authority of
the State of New York; correct?

A. Correct.

Q. Did you personally have any
involvement in the execution of Trataros'
work under this contract?

A. Curis

A. Yes, I did.

Q. What was your involvement?

A. I was project manager for contract sixteen.

Q. Were you the project manager for contract sixteen throughout the entire duration of that work?

A. Yes.

Q. Did Trataros have any other employees with responsibilities on contract sixteen at the project?

A. Yes.

Q. Can you tell me who they were, please.

A. Ramesh, the last name is very long, there was Walter Bartels, there was John Clarke, Tom Spinthourakis, Dino Liapes, Bea Fioriello.

Q. Was there anyone else you recall?

A. There may have been, I just don't recall specifically.

Q. What was John Clarke's title with respect to the Baruch College

A. Curis

A. No.

Q. How about John Clarke, have you spoken with him since you left Trataros?

A. No.

Q. How about Dino Liapes, do you know where he's currently employed?

A. Yes, I do.

Q. Where is he employed?

A. At a Dunkin' Donuts in Brooklyn.

Q. When's the last time you spoke with Dino Liapes?

A. A year or two.

Q. Did Trataros do any other work at Baruch College beside the work done under contract sixteen?

A. Yes, we were also under contract fifteen.

Q. Did John Clarke have any duties with respect to Trataros' work under contract fifteen?

A. The same as contract sixteen.

Q. The same duties?

A. Yes.

Q. Did Walter Bartels have any

A. Curis

Q. Did Trataros enter into contract fifteen before it entered into contract sixteen?

A. Yes.

Q. And had work under contract fifteen begun at the project before the contract sixteen work started?

A. Yes.

Q. About how long before the contract sixteen work started would you say the contract fifteen work began, roughly?

A. I don't know.

Q. If you look at DASNY Exhibit 20 and turn about seven pages in, you'll see there's a specifications and drawings listing.

A. Yes.

Q. On the first page of that listing, do you see there's a section 03551, cementitious floor leveling?

A. Yes.

Q. Was that specification

A. Curis

incorporated into Trataros' contract
sixteen?

A. Yes.

Q. If you turn to the next page,
toward the bottom do you see where it says
section 09420, epoxy terrazzo?

A. Yes.

Q. Was that specification, the
epoxy terrazzo spec, incorporated into
Trataros' contract sixteen work?

A. Yes.

MR. FROESSEL: Let's mark this as
DASNY Exhibit 21, please.

(Whereupon, a document entitled
General Conditions was marked DASNY
Exhibit 21 for identification.)

MR. FROESSEL: For the record,
we've marked as DASNY Exhibit 21,
which is a document entitled General
Conditions.

Q. Ms. Curis, I'd ask you to please
let me know if you've ever seen that
document before.

A. Yes, I have.

A. Curis

Q. Could you tell me what that document is.

A. It's the general conditions for the project.

Q. Specifically were these general conditions applicable to contract sixteen?

A. They're pretty much boilerplate, so it would be more than likely similar or the same to contract fifteen, also.

Q. As you sit here today, do you have any reason to believe that these are not the general conditions that were applicable to contract sixteen?

A. No.

Q. If you turn to page six in the general conditions of Exhibit 21. At the top of the page you'll see there's a subparagraph D which says, "the contractor shall develop and implement quality control plans to ensure itself and the owner that all work performed by the contractor and its subcontractors complies fully with all contract requirements."

Do you see that language?

A. Curis

had been there --

MR. FROESSEL: Withdrawn.

Q. Do you recall how long Walter, Tom, and Dino had been working at the Baruch College project on the contract fifteen work before the contract sixteen work started?

MS. BONACCI: Objection.

A. I don't know.

Q. If you turn to page eighteen of DASNY Exhibit 21, please.

Do you see at the bottom of the page there's an article twelve, subcontracts?

A. Yes.

Q. And do you see section 12.01, subsection C where it says, "the contractor shall be fully responsible for the work, acts, and omissions of subcontractors?"

A. Yes, I do.

Q. In connection with the self-leveling underlayment and the epoxy terrazzo, did Trataros employ any

1 A. Curis

2 subcontractors?

3 A. Yes, we did.

4 Q. Who were they?

5 A. For the terrazzo, it was
6 Crocetti. And for the underlayment,
7 Bartec. Crocetti also did some
8 underlayment and I believe Klepp Floors
9 did some underlayment, also.

10 MS. SMITH: Could you read the
11 last answer, please.

12 (Whereupon the requested portion
13 was read back by the reporter)

14 Q. In what areas did Klepp Floors
15 put down self-leveling underlayment?

16 MS. BONACCI: Objection.

17 A. I believe it was the gymnasium
18 area.

19 Q. Is that an area with a wood
20 floor?

21 A. I believe so.

22 Q. To your knowledge, did Klepp put
23 down any self-leveling underlayment in
24 areas that received epoxy terrazzo?

25 A. I don't believe so.

CERTIFICATION BY REPORTER

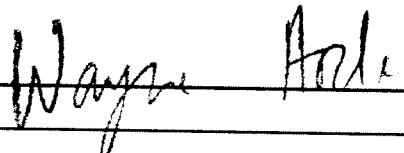
I, Wayne Hock, a Notary Public of the State of New York, do hereby certify:

That the testimony in the within proceeding was held before me at the aforesaid time and place;

That said witness was duly sworn before the commencement of the testimony, and that the testimony was taken stenographically by me, then transcribed under my supervision, and that the within transcript is a true record of the testimony of said witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, that I am not interested directly or indirectly in the matter in controversy, nor am I in the employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto set my hand this 29th day of July, 2008.



VERITEXT REPORTING COMPANY

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK

4 TRAVELERS CASUALTY AND SURETY COMPANY as
5 Administrator for RELIANCE INSURANCE
6 COMPANY,

7 Plaintiff,

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9 DORMITORY AUTHORITY-STATE OF NEW YORK, TDX
10 CONSTRUCTION CORP. and KOHN PEDERSEN FOX
11 ASSOCIATES, P.C.,

12 Defendants.

13 Case No. 08-CV-6915 (DLC)

14 (CAPTION CONTINUED)

15 July 25, 2008

16 10:12 a.m.

17 CONTINUED DEPOSITION of ATHENA
18 CURIS, taken by Defendant, pursuant to
19 Notice, held at the offices of HOLLAND &
20 KNIGHT LLP, 195 Broadway, New York, New
21 York before Wayne Hock, a Notary Public of
22 the State of New York.

1 A. Curis

2 MR. FROESSEL: If we could mark
3 that as DASNY Exhibit 50, please.

4 (Whereupon, a letter dated
5 May 13, 2002 was marked DASNY
6 Exhibit 50 for identification.)

7 MR. FROESSEL: For the record,
8 we've marked as DASNY Exhibit 50 a
9 letter on TDX Construction letterhead
10 dated May 13, 2002. It's addressed to
11 Trataros Construction.

12 Q. Ms. Curis, have you ever seen
13 this letter before?

14 A. Just give me a moment.

15 Q. Sure, take your time.

16 A. (Reviewing).

17 More than likely.

18 Q. Did Trataros respond to this
19 letter from TDX?

20 A. I really can't say with any
21 specifics unless I see some documents.

22 Q. Did Trataros still have a field
23 office at Baruch College in May of 2002?

24 A. I don't know the specific dates,
25 but I know our field office was vacated

1 A. Curis

2 sometime between occupancy between the
3 upper levels and prior to occupancy in the
4 basement.

5 Q. But you don't recall the time
6 frames in terms of months and years?

7 A. Unfortunately, no. Time flies
8 when you're having fun.

9 Q. That's what they say.
10 You stated yesterday that you
11 became a principal of Fox Industries
12 sometime in 2002; is that correct?

13 A. Correct, September of 2002.

14 Q. Were you ever simultaneously a
15 principal of Fox Industries and an
16 employee of Trataros?

17 MS. BONACCI: Objection to form.

18 A. There may have been a minor
19 overlap.

20 Q. When you say, "minor," is that
21 in terms of weeks, months?

22 A. Probably weeks to a month or so.

23 Q. Do you have any knowledge of a
24 financing agreement between Travelers
25 Casualty and Surety Company and Trataros?

1 A. Curis

2 limiting your knowledge just you know they
3 were kept in the office?

4 A. I know they were kept in the
5 office and I know they were separated by
6 job, by contract.

7 Q. In terms of what was maintained
8 at the field office, were these
9 certificates at least maintained there for
10 the subcontractors?

11 A. Not necessarily.

12 Q. Do you have any particular
13 knowledge as to the Crocetti insurance
14 certificate, was that maintained at the
15 field office?

16 A. I don't know that specifically.
17 But for me to have requested a renewal, I
18 must have seen it, an existing
19 certificate.

20 MR. THELANDER: I'm going to show
21 you T86.

22 (Whereupon, a letter dated
23 March 7, 2003 was marked Exhibit T86
24 for identification.)

25 Q. I'm going to show you a document

A. Curis

marked T86. It is a letter with enclosures from TDX to Trataros dated March 7, 2003.

Take your time. Let me know when you've completed looking at it.

A. (Reviewing).

Okay.

Q. Do you recall ever seeing this document before today?

A. Not at the time of the writing of the document, no.

Q. But have you seen it prior to today?

A. Yes.

Q. Could you tell me what your understanding of this document consists of?

A. Quite frankly, Trataros was not in business at this time. I was no longer an employee of Trataros as of the date of this correspondence.

Do you want me to read it now and give you an understanding of what I see it is?

1 A. Curis

2 Q. Sure.

3 My confusion, I guess, is
4 because it's still addressed to you.

5 A. Again, I don't even think
6 Trataros was in business at the time of
7 this correspondence. It's regarding some
8 Testwell laboratory results.

9 Q. Does it identify any problems or
10 anything with what you just identified?

11 MS. BONACCI: Objection to form.

12 MR. PLATEK: Join.

13 A. Uplifting and debonding.

14 Q. Uplifting and debonding?

15 A. That's what's identified as the
16 reference.

17 Q. Just so I'm correct, you were
18 employed at Trataros up until September of
19 2002?

20 A. On or about, yes.

21 Q. This document is marked as
22 DASNY 36.

23 You've seen this document prior
24 to today; have you not?

25 A. Yes.

1 A. Curis

2 A. I would probably first speak
3 with John Clarke.

4 Q. Do you recall ever speaking to
5 John Clarke about this DASNY 50 letter in
6 particular?

7 A. I have no recollection of this
8 letter as I stated previously.

9 Q. Do you recall the time period
10 February, 2002 to May, 2002 speaking to
11 other employees of Trataros with regard to
12 communications with TDX about problems
13 with terrazzo?

14 MS. BONACCI: Objection to form.

15 MR. ZICHELO: Objection to form.

16 A. I don't have any specific
17 recollection.

18 Q. You don't recall?

19 A. I don't have any specific
20 recollection.

21 Q. At some point in time did you,
22 yourself, ever consider contacting the
23 Trataros insurer with regard to the
24 possibility of an insurance claim?

25 A. That's not my responsibility.

1 A. Curis

2 And there was no issue for a claim. There
3 was no -- I was not aware of any uplifting
4 terrazzo, you know, other than the areas
5 that were isolated incidents and repairs
6 that were done during the course of the
7 project.

8 Q. Who was in charge of deciding
9 whether or not to submit a claim to
10 Trataros' insurer for this project?

11 A. I don't know.

12 Q. Did you ever overhear any
13 conversations between any other Trataros
14 employees with regard to submitting any
15 sort of insurance claim to Trataros'
16 insurer?

17 A. I have no recollection of that.

18 Q. Do you have any recollection
19 about Trataros reporting a claim to any
20 insurer of any of the subcontractors in
21 contract sixteen?

22 A. I don't know. I don't have
23 knowledge of that.

24 MR. THELANDER: Thank you.

25 That's all I have.

CERTIFICATION BY REPORTER

I, Wayne Hock, a Notary Public of the
State of New York, do hereby certify:

That the testimony in the within
proceeding was held before me at the
aforesaid time and place;

That said witness was duly sworn
before the commencement of the testimony,
and that the testimony was taken
stenographically by me, then transcribed
under my supervision, and that the within
transcript is a true record of the
testimony of said witness.

I further certify that I am not
related to any of the parties to this
action by blood or marriage, that I am not
interested directly or indirectly in the
matter in controversy, nor am I in the
employ of any of the counsel.

IN WITNESS WHEREOF, I have hereunto
set my hand this 29th day of July
, 2008.

Wayne Hock

VERITEXT REPORTING COMPANY